

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1683 OF 2005

Ahmed Ibrahim Parvani	..Petitioner.
Vs.	
Mrs. Abida Amin Habib	..Respondent.
...	
Mr. D.M. Gupte for the Petitioner.	
Mr. J.S. Kini for the Respondent.	
...	

CORAM: DR. D.Y. CHANDRACHUD, J.

7th June, 2006.

P.C. :

The Petitioner and the Respondent are siblings. The Respondent has instituted a suit before the Civil Judge, Senior Division, at Pune for partition and separate possession. The father of the parties expired on 18th May, 1985 and was predeceased by his wife. It has been averred in the Petition that the father carried on the business of scrap material on land which was taken on lease. The grievance of the Respondent is that though she and the Petitioner are entitled to a half share in the business and the leasehold property, the Petitioner has not furnished accounts of the business and that he is dealing with the property to her exclusion.

2. A preliminary issue was framed by the Trial Court on the application of the Petitioner on the question inter alia as to whether the Court has jurisdiction to entertain and try the suit. The Trial Court was of the view that since the property in question was leasehold property, the jurisdiction to entertain or try the suit would rest exclusively in the Court vested with the jurisdiction to do so under Section 28 of the Rent Act. In appeal, the District Court has held that the suit would not fall within the jurisdiction of the Court under the Rent Act. At the hearing of these proceedings, the attention of the Court has been drawn to the fact that an application for an amendment has been moved by the Respondent on the ground that some part of the leasehold property has been converted to ownership basis. It is not disputed on behalf of the Petitioner that the Court under the Rent Act would have no jurisdiction to deal with the distribution of the business of the father or in respect of properties which are not of a leasehold nature. Having regard to the nature of the issues which arise, which are mixed issues of law and fact, it was perhaps not appropriate to dispose of the suit on a preliminary issue and it would be appropriate if all the issues are decided at the trial of the suit including the issue of jurisdiction. However, counsel appearing for

the Petitioner submitted that the observations contained in the impugned order dated 4th November, 2004 are liable to impede the decision of the Trial Court on the question of jurisdiction. Counsel appearing for the Respondent has in view of the apprehension which has been expressed by the Petitioner submitted that there should be no objection to all the issues including the issue of jurisdiction being decided by the learned Trial Judge independently on merits. Hence, this Petition shall stand disposed of with the direction that it would be open to the Trial Court to decide all the issues that arise in the suit including the issue of jurisdiction and of limitation uninfluenced by any of the observations contained in the impugned order dated 4th November, 2004. All the rights and contentions of the parties are kept open. The Record and Proceedings be sent back to the Trial Court. The Petition is accordingly disposed of.

3. It would be open to the parties to apply before the learned Trial Judge for expediting the disposal of the suit.